

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN**

UNITED STATES OF AMERICA,

Plaintiff,

v.

ALEJANDRO VILLALOBOS,

Defendant.

Case No. 15-CR-51-4-JPS

**ORDER**

On March 12, 2018, Defendant filed a request for a transcript of his sentencing hearing so that he can pursue a motion to vacate his sentence pursuant to 28 U.S.C. § 2255. (Docket #217). Defendant states that he lacks the funds to pay for the transcript. *Id.* He has also provided a petition for leave to proceed *in forma pauperis* and a copy of his prison trust account statement. (Docket #217 at 3-4 and #218).

The Court cannot grant Defendant's request at this juncture. As explained in *Horvath*:

Section 753(f) provides in relevant part:

Fees for transcripts furnished in proceedings brought under section 2255 of this title to persons permitted to sue or appeal in forma pauperis shall be paid by the United States out of money appropriated for that purpose if the trial judge or a circuit judge certifies that the suit or appeal is not frivolous and that the transcript is needed to decide the issue presented by the suit or appeal.

28 U.S.C. § 753(f) (1994). *Horvath* has yet to file a § 2255 motion challenging his conviction or sentence. Based on the plain language and necessary operation of the statute, we conclude that a motion for a free transcript pursuant to § 753(f) is not ripe until a § 2255 motion has been filed.

*United States v. Horvath*, 157 F.3d 131, 132 (7th Cir. 1998). Defendant may claim that he cannot prepare a Section 2255 motion without the transcript, but *Horvath* has answered that concern as well:

The requirement that a § 2255 motion precede a request for a transcript under § 753(f) does not curtail relief under § 2255. A § 2255 motion need only set forth the movant's claims of error generally. See Rules Governing Section 2255 Proceedings, Rule 2(b) ("[The motion] shall specify all the grounds for relief which are available to the movant and of which he has or, by the exercise of reasonable diligence, should have knowledge and shall set forth in summary form the facts supporting each of the grounds thus specified."). The motion can be summarily dismissed if "the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief." 28 U.S.C. § 2255. Presumably, a movant who can plead facts sufficient to obtain certification under § 753(f) will be able to satisfy the non-onerous pleading standards for a § 2255 motion.

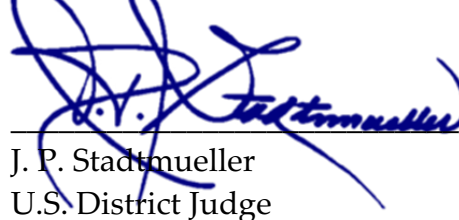
*Id.* at 132-33. In the absence of a pending 2255 motion, Defendant's request must be denied.

Accordingly,

**IT IS ORDERED** that Defendant's request for transcripts (Docket #217) be and the same is hereby **DENIED**.

Dated at Milwaukee, Wisconsin, this 13th day of March, 2018.

BY THE COURT:



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J. P. Stadtmueller  
U.S. District Judge